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IN THE  
**Supreme Court of the United States**

OCTOBER TERM 1938

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No. 465

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ROBERT B. HONEYMAN,

*Appellant,*

against

ALMA CLAIRE CLARK, individually and as Executrix under  
the Last Will and Testament of ANNIE E. POTH, de-  
ceased, and others,

*Respondents.*

and

DAVID B. JACOBS and MARY V. JACOBS, his wife,

*Appellees.*

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**APPELLEES' BRIEF**

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# INDEX

	PAGE
JURISDICTION .....	1
OPINIONS OF THE COURTS BELOW .....	1
STATEMENT OF THE CASE .....	2
POINT I—Sections 1083a and 1083b (Ch. 794, L. 1933) do not vary or impair the obligations of appellant's mortgage contract .....	4
POINT II—Chapter 794 of the Laws of 1933 is a valid exercise of legislative power .....	10
A. The Legislature had ample power to enact Sections 1083a and 1083b of the Civil Prac- tice Act .....	12
B. The emergency which compelled the legisla- tive action in Chapter 794 of the Laws of 1933 .....	13
C. The reasonableness of the statute .....	15
D. The provisions of the statute are limited "to the exigency which called it forth" .....	17
POINT III—The judgment of the New York State Court of Appeals should be affirmed .....	19
APPENDIX—Commonly Known Facts of the Mortgage Emergency in New York .....	20
Table I .....	20
Table II .....	20
Table III .....	21
Table IV .....	25
Table V .....	26

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## TABLE OF CASES

	PAGE
Atchison, T. & S. F. R. Co. v. U. S., 284 U. S. 248, 260 .....	13
Bernheimer v. Converse, 206 U. S. 516, 530 .....	9, 10
Better Plan Building & Loan Association v. Holden, 114 N. J. Eq. 537; 169 Atl. 289 .....	4
Block v. Hirsch, 256 U. S. 135 .....	18
Campbell v. Holt, 115 U. S. 620 .....	17
Chicago Railroad etc. v. Wellman, 143 U. S. 339, 346 .....	17
City Bank Farmers Trust Company v. Ardlea Corp., • 267 N. Y. 224 .....	16, 18
Crane v. Hable, 258 U. S. 142, 147 .....	9
Graffam v. Burgess, 117 U. S. 180, 191, 192 .....	4
Guaranteed Title & Mortgage Company v. Scheffres, 247 App. Div. 294 .....	5
Heiman v. Bishop, 272 N. Y. 83 .....	10, 16, 17
Highland v. Russell Car etc. Company, 279 U. S. 253 .....	17
Home Building & Loan Association v. Blaisdell, 290 U. S. 398, 446 .....	4, 9, 10, 15, 17, 18, 19
Honeyman v. Hanan, 275 N. Y. 382 (appeal dis- missed, 302 U. S. 375) .....	16
Klinke v. Samuels, 264 N. Y. 144 .....	14, 16
Kurtz et ux. v. Ferrante et al., 243 App. Div. 739 .....	5
Levy Leasing Company v. Siegel, 258 U. S. 242 .....	18
Louisville Bank v. Radford, 295 U. S. 920 .....	17
Louisville Trust Company v. Louisville etc. Railway, 174 U. S. 674, 688, 689 .....	5
Marcus Brown Company v. Feldman, 256 U. S. 170 .....	18

	PAGE
Matter of People (Title & Mortgage Guaranty Co.), 264 N. Y. 69, 85.....	14
Monaghan v. May, 242 App. Div. 64.....	5
Oshkosh Water Works Company v. Oshkosh, 187 U. S. 437, 439.....	9
Patapasco Guano Co. v. Board of Agriculture, 171 U. S. 345 .....	17
Red River Valley Bank v. Craig, 181 U. S. 548.....	9
Richmond Mortgage & Loan Corp. v. Wachovia Bank, 300 U. S. 127, 129.....	4, 8, 9, 10, 12, 17, 19
Suring State Bank v. Giese, 210 Wis. 489.....	4
Waggoner v. Flack, 188 U. S. 595, 602, 603.....	9
Wilson v. Standefer, 184 U. S. 399.....	9
Worthen Company v. Kavanaugh, 295 U. S. 56.....	17
Worthen Company v. Thomas, 292 U. S. 426.....	17
Young v. Weber, 117 N. J. Eq. 242, 175 Atl. 273.....	8, 14

## TABLE OF STATUTES

	PAGE
<b>Civil Practice Act:</b>	
Section 1077b .....	18
Section 1083 .....	2, 4, 5, 7, 8
Section 1083a .....	2, 3, 4, 12
Section 1083b .....	2, 4, 12
<b>Laws of 1933 of New York:</b>	
Chapter 793 .....	18
Chapter 794 .....	1, 2, 4, 5, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19
<b>Laws of 1937 of New York:</b>	
Chapter 83 .....	18
<b>United States Constitution:</b>	
Article I, Section 10 .....	2, 3, 9, 10

## MISCELLANEOUS

Clark, The Internal Debts of the United States (20th Century Fund, 1933) .....	13
New York Herald Tribune, December 30, 1934 .....	13



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**APPELLEES' BRIEF.**

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**Jurisdiction.**

The appellant heretofore duly filed a statement as to jurisdiction. Probable jurisdiction was noted by this Court on December 5, 1938.

**Opinions of the Courts Below.**

The opinion of the New York State Court of Appeals in this case is reported in 278 N. Y. 467 and is found in the record at pages 31 and 32. It holds that Chapter 794 of the Laws of 1933 of New York is not in violation of the United States Constitution. This was the sole question raised on the appeal.

The appeal to the Court of Appeals was directly from a final order of a Special Term of the New York Supreme Court, pursuant to law. —A memorandum of opinion by the Special Term is found in the record at page 27.

### Statement of the Case.

The action here was one to foreclose a mortgage, upon real property, executed and delivered by the appellees on February 4, 1928, to secure payment of their bond in the sum of \$15,000. The bond and mortgage were subsequently extended in 1931. In 1936, the mortgaged premises were conveyed to respondent Clark, who is not an appellee because no application for judgment was made against her. The respondent Clark defaulted in the payment of interest, taxes and maintenance of fire insurance. Summons and complaint were served upon appellees and respondent. Appellees appeared in the action by their attorneys. Respondent Clark did not appear.

Judgment of foreclosure and sale was entered on April 21, 1938. Thereafter, a sale was held and the property was bought in by the appellant, plaintiff in the foreclosure action, for \$7,500.

The difference between the mortgage debt plus disbursements, costs and allowance and the amount of appellant's bid was \$9,590.

Appellant then moved for an order directing a deficiency judgment to be entered in his favor against the appellees for \$9,590, "under the law of his contract" (R. p. 6, fol. 9), and alleged that Sections 1083a and 1083b of the Civil Practice Act (Ch. 794, L. 1933) violated his rights under Section 10 of Article I of the United States Constitution.

By "the law of his contract", appellant presumably meant Section 1083 of the Civil Practice Act, which was

in force at the time of the making of the bond and mortgage, namely, February 4, 1928, and which prescribed the procedure for obtaining a deficiency judgment. The challenged sections were enacted in 1933 and were in force when this action was commenced in February, 1938.

Under Section 1083a C. P. A., the Court on motion is required to determine, upon affidavits or otherwise as it shall direct, the fair and reasonable market value of the mortgaged property as of the date of sale in foreclosure or such nearest earlier date as there shall have been any market value therefor. The deficiency judgment shall be made for the amount claimed by the plaintiff less the value of the property as so determined, or the sale price thereof, whichever is higher.

Appellant offered no evidence as to the value of the property on the motion. Appellees offered evidence in the form of an affidavit to show that the property was worth \$25,318.

The Court, at Special Term, entered its order denying the motion for deficiency judgment on the ground that the value of the property was at least equal to the plaintiff's debt and that the plaintiff was deemed paid as a matter of law. The Court also held the challenged statute to be constitutional. On appeal directly to the Court of Appeals, that Court held that the statute does not impair the obligation of the appellant's mortgaged contract in violation of Article I, Section 10 of the United States Constitution.

This appeal is from that determination.

The Attorney General of New York was substituted for the original attorneys for the appellees upon consents of both the attorneys and the appellees. He appears in this appeal in order to defend the constitutionality of the challenged statute.

4

## POINT I

**Sections 1083a and 1083b (Ch. 794, L. 1933) do not vary or impair the obligations of appellant's mortgage contract.**

At the time of the execution of the instrument sued on, Section 1083 of the Civil Practice Act governed proceedings to secure deficiency judgments in foreclosure. That section provided:

"If a person who is liable to the plaintiff for the payment of a debt secured by the mortgage is made a defendant in the action and has appeared or has been personally served with the summons, the final judgment *may* award payment by him of the residue of the debt remaining unsatisfied after a sale of the mortgaged property and the application of the proceeds pursuant to the directions contained therein." (Italics ours.)

Sections 1083a and 1083b (Ch. 794, L. 1933) were passed subsequent to the making of appellant's contract.

The inherent power of equity has long been recognized to prevent gross inadequacy of price and excessive hardship and injury in foreclosure proceedings.

*Richmond Mortgage & Loan Corp. v. Wachovia Bank*, 300 U. S. 127, 129.

*Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 446.

*Graffam v. Burgess*, 117 U. S. 180, 191, 192.

*Suring State Bank v. Giese*, 210 Wis. 489.

*Better Plan Building & Loan Association v. Holden*, 114 N. J. Eq. 537; 169 Atl. 289.

The Court is not a mere mechanical enforcing agency of the bare terms of mortgage agreements. It must protect and enforce all the equities involved.

*Louisville Trust Company v. Louisville etc. Railway*, 171 U. S. 674, 688, 689.

The decisions of the New York Courts, just as the cases above cited, clearly establish that the appellant had no absolute or vested right under Section 1083 C. P. A. to a judgment for the full difference between the proceeds of the foreclosure sale and the mortgage debt.

*Monaghan v. May*, 242 App. Div. 64.

*Guaranteed Title & Mortgage Company v. Schefres*, 247 App. Div. 294.

*Kurtz et al. v. Ferrante et al.*, 243 App. Div. 739.

In *Monaghan v. May*, *supra*, the mortgages foreclosed aggregated \$24,077.55. Plaintiff, the mortgagee, bid in the property for the sum of \$5,000 and moved to confirm the referee's report of sale and for a deficiency judgment of \$19,791.71. Leave to enter a deficiency judgment was denied on the ground that the value of the mortgaged property in the hands of the mortgagee equaled the mortgage debt and completely satisfied it. The Court held that Section 1083 of the Civil Practice Act, providing that the Court *may* grant a deficiency judgment, is not mandatory, but leaves it within the discretion of a court of equity to grant or withhold such relief. The sale of the property in that case was held shortly before the passage of Chapter 794 of the Laws of 1933. The decision of the Appellate Division was made subsequent to the passage. In answer to the argument that Chapter 794 did not apply to that action the Court said in part:

"The Legislature has declared that an emergency exists, fixed the period thereof, and declared that cer-

tain remedies available to mortgages (inter alia, in respect, to deficiency judgments) shall be subject to limitations during that period. These enactments 'provide procedure and relief which are cognate to the historic exercise of equitable jurisdiction.' Equity is not circumscribed by these statutory dates if the emergency in fact had an earlier origin. These enactments do not deprive a court of equity of its inherent power to place limitations upon the remedies available to a mortgagee in consonance with fundamental doctrines of equity. (*Clinton Trust Co. v. 142-144 Lorain St. Street Corp.*, 237 App. Div. 789.) A court of equity may do this during such times as it deems are within the period of economic stress and emergency, which period may be equal to or greater than that fixed by the Legislature.

When the Legislature spoke, mortgagors and mortgagees learned, earlier than they would have if left to the results of invoking judicial power, that continued abnormal economic conditions would not be permitted to unjustly oppress the borrower. *But the judicial power to effect the same result has always been and still is there, responsive to a proper case for its exercise—apart from the statutory declarations*" (pp. 65 and 66).

\* \* \* \* \*

"In exercising its statutory jurisdiction, a court of equity will be guided by equitable principles. To obtain a deficiency judgment and determine the amount thereof, it is necessary to invoke equitable power to confirm the sale had under the judgment of foreclosure. When seeking affirmative judicial action in equity, one may not succeed if one is asking an inequitable or unconscionable result. Equity may refuse to confirm such a sale where it has produced an inadequate price" (pp. 66 and 67).

\* \* \* \* \*

"The court found that the mortgagee was the purchaser at a price that was so inadequate as to shock the conscience of the court. It concluded to treat the

price as merely nominal and to confirm the report in view of its further finding that the true value of the property in plaintiff's hands was equal to the amount of the mortgage debt. This made it equitable to confirm the report of sale, since the property vested in the mortgagee and fully satisfied the mortgage debt. This procedure constituted the mortgage debt as the real price on the sale. *The court having the power to refuse to confirm the report of sale because the price was inadequate, it likewise had the kindred power to refuse to authorize the entry of a deficiency judgment based on such a sale and computed on such an inadequate or nominal price base. The court thus merely declined to exercise its statutory jurisdiction except where its powers in this regard are invoked to do equity. If the property did not equal in value the mortgage debt, then equity would require the granting of a deficiency judgment; but that is not this case*" (p. 67).

. . . . .

*"No rights rest, perforce the judgment of foreclosure, in plaintiff for a deficiency judgment in any amount until plaintiff satisfies a court of equity that it would be equitable and just, as a consequence of what has occurred on the sale, to authorize the entry of a deficiency judgment"* (p. 67). (Italics ours.)

Appellant's right to a deficiency judgment was thus subject, before the enactment of Chapter 794, to the provisions of Section 1083 of the Civil Practice Act and to the inherent power of equity to refuse to grant him anything beyond the satisfaction of his debt. Chapter 794 recognized that conditions of hardship were no longer occasional but, indeed, universal. In so doing it merely directed that in all cases of foreclosure during the limited period of the emergency, necessitous circumstances compelled that deficiency judgments be subjected to judicial scrutiny and that equitable principles be applied to all persons applying for them.



It is apparent that not even the remedies of the appellant were affected by the challenged statute. Appellant's remedy was always subject to the inherent power of equity to deny a deficiency judgment and Chapter 794 merely enlarged the group of cases in which equitable defenses and principles would be applied.

Appellant will undoubtedly contend that his constitutional right is not subject to such an enlargement. He contends that his contract embraced by implication only the remedies and procedure provided in said Section 1083 of the Civil Practice Act.

This Court has said that a mortgage contract contemplates that the lender could make himself whole, if necessary, out of the security, not that he should be enriched at the expense of the borrower or realize more than what would repay the loan with interest.

*Richmond Mortgage & Loan Corp. v. Wachovia Bank; supra.*

This principle arises out of the ancient equitable maxim that "equity will not suffer a double satisfaction to be taken". In *Young v. Weber*, 117 N. J. Eq. 242, 175 Atl. 273, there was quoted with approval an earlier case, in which it was said, "Satisfaction of the debt and not pillage of the debtor's estate is equity's relief." It would be difficult to find a better example of unjust enrichment than in the present case. Here is a piece of property valued by competent and uncontradicted testimony at more than \$25,000. The entire amount of the mortgage debt, costs and expenses totalled \$17,190 (p. 9). Appellant's bid in the foreclosure sale was \$7,500 and was the only bid received. The appellant asks this Court to award him a piece of property valued at \$25,000, plus a judgment of \$9,590, a total of more than \$35,000, to satisfy a \$17,000 debt. It is apparent that any court of equity would readily refuse such a demand as uncon-



reasonable even without the statute to which objection is made.

The People of the State of New York contend that, since no person had an absolute right to a deficiency judgment prior to the passage of Chapter 794, no contractual right is lost or impaired by a statute which only defines or limits a right which is conditional, not absolute.

No one has a vested right to particular remedies or procedures, even though they are in existence when contracts are made.

*Oshkosh Water Works Company v. Oshkosh*, 187 U. S. 437, 439.

*Richmond Mortgage & Loan Corp. v. Wachovia Bank*, 300 U. S. 127.

The remedies available to enforce a contract may be enlarged, modified or restricted without doing violence to Article I, Section 10 of the Constitution.

*Waggoner v. Flack*, 188 U. S. 595, 602, 603 (Statute changed contract so as to give state previously non-existent right of forfeiture of contract).

*Bernheimer v. Converse*, 206 U. S. 516, 530 (Statute gave receivers rights to sue non-resident stockholders).

*Red River Valley Bank v. Craig*, 181 U. S. 548 (Change in law as to rights of lienors to compel sale of land as against mortgagee).

*Wilson v. Standerfer*, 184 U. S. 399 (Permitted forfeiture of land contracts by the state without judicial proceedings).

*Crane v. Haklo*, 258 U. S. 142, 147 (Changed method of review in condemnation cases from general review to a very limited form of review).

*Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 429, 430 (Permitted the extension

of the period of redemption in mortgage foreclosures).

*Richmond Mortgage & Loan Corp. v. Wachovia Bank*, 300 U. S. 127 (Permitted defendant in foreclosure to show, by way of defense and set-off, that property was worth the amount of the mortgage debt).

The principle underlying Chapter 794 is analogous to that stated in the case of *Bernheimer v. Converse*, *supra*, at page 530.

Chapter 794 makes more universally enforceable pre-existing equitable remedies, just as the statute made more universally enforceable the remedies in the *Bernheimer* case.

It cannot be said that such alteration of procedure deprives appellant of his right to a deficiency judgment. In the first place, there is no *absolute* right. In the second place, he may even now have a deficiency judgment if the value of the property is insufficient to make him whole.

See *Heiman v. Bishop*, 272 N. Y. 83.

That Chapter 794 was in response to public need and legitimately addressed to those needs is more fully discussed in a succeeding portion of this brief.

## POINT II

**Chapter 794 of the Laws of 1933 is a valid exercise of legislative power.**

The pertinent constitutional questions as to the validity of Chapter 794 of the Laws of 1933 under Article I, Section 10 of the Constitution, were discussed fully by this Court in *Home Building & Loan Association v. Blaisdell*,

290 U. S. 398. In that case this Court declared certain established principles of constitutional law:

FIRST: The police power of a state may be exercised directly to prevent the immediate and literal enforcement of contractual obligations by temporary and conditional restraint where vital public interests would otherwise suffer (pp. 440, 436, 437).

SECOND: Though emergencies do not create legislative power, they furnish the occasion for the exercise of that power (p. 426).

THIRD: The question in such cases is whether the emergency and the legislation bear to each other some just, legitimate and reasonable relation (p. 426).

FOURTH: The economic interests of the state may, through the police power, justify the interference of its dominant power notwithstanding interference with contracts (p. 437).

FIFTH: "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order" (p. 435).

SIXTH: The facts found by the Legislature are presumed to be true in the absence of patent invalidity or proof to the contrary. Further, economic facts of common knowledge may be considered by the Court in determining if there exists the emergency which occasioned the exercise of the power (p. 444). (Commonly known facts of the mortgage emergency in New York appear in Appendix.)

**A. The Legislature had ample power to enact Sections 1083a and 1083b of the Civil Practice Act,**

This Court, in *Richmond Mortgage & Loan Corp. v. Wachovia Bank*, 300 U. S. 127, held that a state has the power to permit a defendant, in a foreclosure action, to show, by way of defense and set-off, that the property sold is worth the amount of the mortgage debt or, on the other hand, that the sum bid is substantially less than the true value of the property and thus defeat the claim for deficiency judgment in whole or in part. In that case, the mortgage affected was executed prior to the passage of the statute involved. Furthermore, the statute was not for a specified period of emergency, but was made a part of the permanent legislation of North Carolina.

The *Richmond* case, we submit, is a complete answer to appellant's contention that New York State had no power to pass Sections 1083a and 1083b of the Civil Practice Act. The purpose and effect of the New York statute are precisely the same as those of the statute in the *Richmond* case. Furthermore, the operation of the New York statute was limited only to the period of emergency.

While it is true that the *Richmond* case applied only to situations in which the holder of the mortgage was the purchaser at the foreclosure sale, in practical effect there is no distinction between the New York statute and the North Carolina statute there passed upon. In the present case, the holder of the mortgage was the purchaser. Furthermore, as may be seen by Appendix Table IV, only two percent of sales in foreclosure were made to persons other than holders of the mortgage. It is safe to assume that even as to this two percent, a large portion of sales to persons other than the holder of the mortgage were instances in which a second mortgagee bought

in to protect his junior lien. Prospective buyers know that a mortgagee can bid up to the value of his debt without having to make any cash outlay. Therefore, persons who might otherwise be buyers stay away from foreclosure sales.

**B. The emergency which compelled the legislative action in Chapter 794 of the Laws of 1933.**

The depression "is the outstanding contemporary fact, dominating thought and action throughout the country".

*Atchison, T. & S. F. R. Co. v. U. S.*, 284 U. S. 248, 260.

The largest item in the internal national debt account in 1932 was the mortgage burden on the country's real estate.

*Clark, The Internal Debts of the United States* (20th Century Fund, 1933), p. 6 et seq.

The urban mortgage debt burden increased by more than 300% from 1922 to 1929.

*Clark, op. cit., supra*, p. 16.

And of the total national mortgage debt of approximately \$35,000,000,000 in 1932, it has been estimated that almost 30% was secured by New York real estate.

*Clark, op. cit., supra*, p. 5.

*New York Herald Tribune*, December 30, 1934, p. 2.

In 1932, when the epidemic of forced sales through foreclosure reached its peak, properties foreclosed were more than six times the number of those foreclosed in 1928.<sup>1</sup> The assessed valuations of foreclosed properties in the

<sup>1</sup> See Appendix Table I.

Borough of Manhattan in the City of New York in 1932 were \$252,550,500 as compared with assessed values of foreclosed properties of \$39,332,000 in 1928.<sup>2</sup> Of the properties foreclosed 91.6 were income producing.<sup>3</sup> Table II shows the various types of buildings which were subjected to foreclosure in the period from 1928 to 1932.

The Courts of New York took judicial notice of the sudden change in economic conditions which resulted in widespread damage to real estate investors.<sup>4</sup>

*Matter of People (Title & Mortgage Guaranty Co.)*,  
264 N. Y. 69, 85,

*Klinke v. Samuels*, 264 N. Y. 144.

The situation before the Legislature disclosed that in the period of stress immediately preceding the passage of Chapter 794, property owners were not only faced with the loss of their properties but with the imposition of a terrific burden in the form of deficiency judgments. Not only were these deficiency judgments large in amount, but the deficiencies had no actual relation to the difference in value between the properties acquired in foreclosure and the amount due the mortgagee. The effect was not only to satisfy the mortgagee's debt, but to pillage the debtor's estate (*Young v. Weber*, 117 N. J. Eq. 242).

In Appendix Table III, the relationship between the sum bid in the foreclosure sale, the mortgage debt, the resultant deficiency judgment and the assessed valuation of the properties foreclosed is shown. The amount bid at the foreclosure sale is 10.44% of the value of the property as assessed for tax purposes in the eight months' period immediately preceding the passage of Chapter 794, Laws of 1933. Furthermore, it appeared that practically

<sup>2</sup> See Appendix Table I.

<sup>3</sup> See Appendix Table II.

no one other than the mortgagee was bidding in at these foreclosure sales (see Appendix Table IV). There was a total absence of any competition. As a result, any bid, however nominal, secured the sale at the auction room.

Under such circumstances, the situation became one in which mortgagees had within their grasp the possibility of double satisfaction. They were securing property worth in most cases the amount of the mortgage debt and, in addition, a deficiency judgment for practically the full amount of the debt (see Appendix Table III).

With these facts before it, the Legislature enacted Chapter 794 of the Laws of 1933.

The declaration of emergency included in Section 4 of Chapter 794 recites the existence of conditions which in view of the circumstances indicated herein justified the enactment. Their findings may not be lightly set aside.

*Home Building & Loan Association v. Blaisdell*,  
*supra*, at p. 444.

### C. The reasonableness of the statute.

Chapter 794 of the Laws of 1933 does not prohibit deficiency judgments. It requires that established equitable principles be applied in each instance where an application for a deficiency judgment is made. The actual value of the property is set off against the debt. A deficiency judgment is denied only where that value is equal to or greater than the debt. If that value is less than the debt, the judgment must be for the difference between the two.

It is manifestly not unreasonable to require this offset in view of the fact that over 90% of the property involved in foreclosures between 1928 and 1932 was income producing (see Appendix Table II).



In Appendix Table V, the operation of Chapter 794 is shown. Of 223 applications for deficiency judgments made by the Mortgage Commission of the State of New York, 70 resulted in a denial of the application, and in the remaining 153 cases, deficiency judgments, varying from less than 3% to nearly 100% of the mortgage debt, were obtained. It appears that the statute merely results in more equitable deficiency judgments.

When the mortgagee makes his application for a deficiency judgment, the Court determines upon affidavit or other proof the fair and reasonable market value of the mortgaged premises as of the date of sale. In making this appraisal the Court must receive evidence

"of the age and construction of the buildings on the premises, the rent received therefor, assessed value, location, condition of repair, the sale price of property of a similar nature in the neighborhood; conditions in the neighborhood which affect the value of the property therein, accessibility, and all other elements which may be fairly considered as affecting the market value of real property in a given neighborhood."

*Heiman v. Bishop*, 272 N. Y. 83, 88.

This statute was held to be constitutional by the New York State Court of Appeals in the cases of *Klinke v. Samuels*, 264 N. Y. 144; *City Bank Farmers Trust Company v. Ardlea Corp.*, 267 N. Y. 224; *Honeyman v. Hanau*, 275 N. Y. 382 (appeal dismissed, 302 U. S. 375), as well as in this case.

The right which appellant claims to be deprived of is the right, in a foreclosure sale, to receive property whose value is equal to or in excess of the mortgage debt and, in addition, a deficiency judgment in an amount nearly equal to the mortgage debt.



The determining test in any case involving police power is whether or not the public benefit outweighs the resulting burden on individual interests. The burden upon the mortgagee under Chapter 794 is a requirement that he receive no more than that which is due him from the mortgagor. Such a "right" to double enrichment as the appellant here urges is unconscionable. The Constitution guarantees to no one the right to exploit or to take an unconscionable advantage of another.

*Chicago Railroad etc. v. Wellman*, 143 U. S. 339, 346.

*Highland v. Russell Car etc. Company*, 279 U. S. 253.

*Patapsco Guano Co. v. Board of Agriculture*, 171 U. S. 345.

*Campbell v. Holt*, 115 U. S. 620.

"The statute recognizes the obligation of his contract and his right to its full enforcement but limits that right so as to prevent his obtaining more than is his due." (*Richmond Mortgage & Loan Corp. v. Wachovia Bank*, 300 U. S. 127, 130.)

**D. The provisions of the statute are limited "to the exigency which called it forth".**

In accordance with the principles laid down in *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, and reiterated thereafter in *Worthen Company v. Thomas*, 292 U. S. 426; *Worthen Company v. Kavanaugh*, 295 U. S. 56, and *Louisville Bank v. Radford*, 295 U. S. 920, the relief sought to be afforded by this statute is limited strictly to the duration of the emergency and is based on reasonable terms (See Appendix Table V and *Heiman v. Bishop*, *supra*). The emergency period of Chapter 794 was ex-

tended for one year from 1937 to 1938 by Chapter 83 of the Laws of 1937.

Not only does the statute provide for the relief to be limited strictly to the duration of the emergency periods of one year each, but in addition provides an alternative remedy, the use of which relieves a mortgagee from any hardship which he may feel is imposed upon him by the statute.

In a case such as the instant one, where an independent action is being brought upon the collateral bond, there is no necessity for bringing the action during the period of the emergency. The Statute of Limitations does not run against the appellant during the emergency (Section 1077f, Civil Practice Act, and see *City Bank Farmers Trust Company v. Ardlea*, 267 N. Y. 224, holding that Chapter 794 and Chapter 793, of which Section 1077f is a part, must be read together). To this extent, the statute merely sets up a limited postponement of the "right" to a deficiency judgment similar to the suspension expressly approved in the *Blaisdell* case.

Appellant argues that he is being deprived of a deficiency judgment permanently. He claims that once a deficiency judgment is denied to him, it is lost forever. In the first place, he may, by electing not to sue until the end of the emergency, avoid the provisions of the statute. In the second place, he had no absolute right to a deficiency judgment under established equitable principles (see Point I, *supra*). In the third place, this Court has established that, under certain necessitous circumstances, such impairment of contract as appellant claims to exist is proper under the Constitution.

*Block v. Hirsch*, 256 U. S. 135.

*Marcus Brown Company v. Feldman*, 256 U. S. 170.

*Lery Leasing Company v. Siegel*, 258 U. S. 242.

*Home Building & Loan Association v. Blaisdell,*  
*supra.*

*Richmond Mortgage & Loan Corp. v. Wachovia*  
*Bank, 300 U. S. 127.*

In the rent cases cited above, landlords were denied the right to oust tenants at the expiration of their leases, except upon reasonable terms. The right of ouster, which existed at the termination of the tenant's lease *as of a particular date was permanently denied.* The power of ouster under a lease was revived at the termination of the emergency. At the end of the emergency here, Chapter 794 will become inoperative.

### POINT III

**The judgment of the New York State Court of Appeals should be affirmed.**

Respectfully submitted,

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## APPENDIX

Commonly Known Facts of the Mortgage Emergency  
in New York

TABLE I

Increase in Foreclosures in Borough of Manhattan, New York City,  
from 1928-1932<sup>1</sup>

Year	Assessed Valuation of Property Foreclosed in Manhattan	Percent of 1928
1928.....	\$ 39,332,000	100.00
1929.....	67,290,000	171.1
1930.....	89,879,500	228.5
1931.....	172,332,000	438.1
1932.....	252,550,500	642.1

<sup>1</sup> Figures compiled by the State Board of Housing (R. & G., July 22, 1933, p. 5).

TABLE II

Types of Property in Foreclosure<sup>1</sup>Percentage of the Assessed Value of Each  
Type of Property to the Assessed Value  
of the Total Foreclosed in Manhattan

Type of Property	1928	1929	1930	1931	1932
Apartments and Tenements.....	68.7	62.9	61.8	52.8	61.1
Dwellings .....	4.8	3.2	3.6	2.4	4.2
Hotels .....	1.3	4.9	3.9	1.7	4.9
Lofts .....	12.0	15.8	13.0	14.6	12.5
Office Buildings .....	3.2	1.9	6.5	21.4	8.5
Stores .....	.3	.4	3.2	.5	.8
Theatres and Halls.....	1.5	4.4	1.2	.6	3.1
Garages and Stables.....	2.4	.5	1.1	2.4	.7
Vacant Land .....	.4	.8	.2	.4	.5
Miscellaneous .....	5.4	5.2	5.5	3.2	3.7
Total.....	100.	100.	100.	100.	100.

<sup>1</sup> Figures compiled by the State Board of Housing (R. & G., September 8, 1934, p. 8).

TABLE III

One Hundred and Forty (140) Foreclosure Actions Brought in the Name of New York Title and Mortgage Company, Plaintiff, for the Period from January 1, 1933, to August 15, 1933, Inclusive

## RECAPITULATION

1933		Bids in Foreclosure Sales	Mortgage Debt	Deficiency Judgment	Assessed Valuation for Tax Purposes
January	1st to 31st, incl.	\$120,150	\$1,238,395	\$1,118,245	\$1,516,050
February	1st to 28th, incl.	105,000	1,002,720	897,720	1,349,625
March	Through May 31st	36,500	921,589	885,089	1,067,400
June	Through Aug. 15th	235,900	671,420	435,520	829,500
		<u>\$497,550</u>	<u>\$3,834,124</u>	<u>\$3,336,574</u>	<u>\$4,762,575</u>
Total Due a/c Mortgage Indebtedness			\$3,834,124		
Total Bids at Foreclosure Sales			497,550		
Total Deficiency Judgments				\$3,336,574	

Purchase price of \$497,550 is 12.96% (percent) of total Mortgage Indebtedness

Purchase price of \$497,550 is 10.44% (percent) of Assessed Valuation

		Bids at Foreclosure Sales	Mortgage Debt	Deficiency Judgment	Assessed Valuation for Tax Purposes
Jan.	1933	\$ 1,000	\$ 4,797	\$ 3,797	\$ 4,200
		1,000	4,749	3,749	2,850
		1,000	4,749	3,750	2,850
		2,000	22,967	20,967	32,000
		10,000	145,080	135,080	161,000
		1,000	4,784	3,784	5,000
		1,500	7,765	6,265	10,000
		1,500	7,074	5,574	6,600
		1,500	9,822	8,322	14,000
		1,000	4,182	3,182	4,200
		1,850	10,701	8,851	11,000
		17,550	18,594	1,044	20,000
		1,000	4,470	3,470	4,400

<sup>1</sup> Plaintiff in each of these foreclosure actions was the New York Title & Mortgage Company. The properties bought in by the N. Y. T. & M. Co. were in the names of Land Estates, Inc., and Liberdar Holding Corp., two wholly owned subsidiaries. Records on file at office of N. Y. T. & M. Co., No. 141 Broadway, New York City, N. Y.

TABLE III (continued)

		Bids at Fore- closure Sales	Mortgage Debt	Deficiency Judgment	Assessed Valuation for Tax Purposes
Jan.	1933.....	\$ 800	\$ 7,421	\$ 6,621	\$ 7,200
		950	7,644	6,694	7,000
		1,200	10,759	9,559	13,000
		1,500	9,470	7,970	11,000
		1,000	4,018	3,018	4,200
		2,500	43,130	40,630	55,000
		1,500	9,476	7,976	11,000
		1,500	9,462	7,962	11,000
		1,000	6,188	5,188	9,500
		1,950	16,684	14,734	12,000
		600	4,816	4,216	4,500
		1,000	19,240	18,240	19,700
		1,000	37,689	36,689	50,000
		5,000	85,135	80,135	112,000
		10,000	36,187	26,187	46,000
		1,000	18,020	17,020	25,500
		1,000	25,312	24,312	38,000
		10,000	147,395	137,395	210,000
		1,000	18,362	17,362	45,200
		5,000	64,402	59,402	75,000
		11,000	11,980	980	15,000
		1,000	4,432	3,432	4,600
		1,000	4,397	3,397	4,200
		1,200	8,671	7,471	10,300
		1,200	8,658	7,458	10,200
		1,150	8,661	7,511	10,000
		1,000	4,234	3,234	4,800
		11,000	16,387	5,387	21,000
		100	7,322	7,222	10,000
		100	8,378	8,278	10,000
		100	8,701	8,601	11,000
		100	8,489	8,389	12,000
		100	11,530	11,430	15,000
		100	6,607	6,507	6,900
		100	8,399	8,299	9,500
		100	8,416	8,316	8,500
		100	8,077	7,977	8,000
		100	11,900	11,800	18,000
		100	195,596	195,496	210,000
		100	61,765	61,665	75,000
Feb.	1933.....	10,000	108,814	98,814	125,000
		5,000	104,065	99,065	107,000
		400	4,897	4,497	4,600
		1,100	8,556	7,456	8,000
		650	5,579	4,929	2,775
		650	5,569	4,919	2,775
		650	5,561	4,914	2,750
		650	5,665	5,015	2,800
		10,000	66,843	56,843	33,000
		650	5,616	4,966	2,800
		1,000	37,714	36,714	57,000
		100	8,000	7,900	9,800

TABLE III (continued)

	Bids at Fore- closure Sales	Mortgage Debt	Deficiency Judgment	Assessed Valuation for Tax Purposes
Feb. 1933.....	\$ 100	\$ 13,223	\$ 13,123	\$ 14,000
	2,000	34,494	32,494	43,000
	5,000	119,016	114,016	150,000
	650	5,880	5,230	2,775
	100	9,039	8,939	11,000
	500	1,208	708	3,000
	<del>800</del>	<del>4,517</del>	<del>3,717</del>	<del>4,600</del>
	7,000	14,723	7,723	16,000
	2,000	4,561	2,561	4,600
	10,000	27,195	17,195	30,000
	1,250	7,514	6,264	6,000
	1,000	5,112	4,112	6,100
	750	6,452	5,702	5,500
	2,500	111,085	108,585	120,000
	100	14,828	14,728	17,000
	1,000	56,731	55,731	310,000
	100	4,630	4,530	4,000
	1,000	5,117	4,117	5,500
	1,000	7,291	6,291	7,350
	1,000	7,400	6,400	6,300
	3,000	7,612	4,612	7,000
	7,500	8,647	1,147	11,000
	5,000	12,726	7,726	10,500
	10,000	79,965	69,965	110,000
	1,500	10,823	9,323	12,500
	1,000	6,614	5,614	8,000
	1,000	21,337	20,337	35,000
	1,000	4,704	3,704	4,700
	3,000	9,478	6,478	10,200
	800	4,166	3,366	3,700
	1,500	4,444	2,944	6,000
	1,000	5,306	4,306	8,000
March • 1933.....	100	5,296	5,196	8,500
	100	10,533	10,433	12,500
	1,200	8,232	7,032	7,600
	1,000	<del>12,013</del>	11,013	18,500
	1,500	23,150	21,650	24,000
	5,000	34,615	29,615	43,000
	5,000	39,727	34,727	35,000
	1,000	12,542	11,542	14,000
	1,000	26,744	25,744	20,000
April 1933.....	1,000	24,746	23,746	38,000
May • 1933.....	100	395,795	395,695	390,000
	100	10,944	10,844	13,000
	100	10,466	10,366	13,000
	100	10,436	10,336	13,000
	5,000	119,016	114,016	185,000
	100	10,979	10,879	12,500
	100	9,342	9,242	8,200

TABLE III' (continued)

		Bids at Fore- closure Sales	Mortgage Debt	Deficiency Judgment	Assess- Valuation for Tax Purposes
May	1933.....	\$ 3,000	\$ 30,927	\$ 29,927	\$ 33,000
		100	6,144	6,044	6,500
		2,000	18,072	16,072	41,000
		100	9,342	9,242	8,000
		100	9,189	9,089	10,000
		100	9,340	9,240	8,100
		3,000	12,081	9,081	17,000
		100	10,332	10,232	12,500
		100	10,279	10,179	12,500
		4,000	20,346	16,346	41,000
		1,200	8,590	7,390	7,000
		100	9,398	9,298	9,000
		100	2,973	2,873	6,000
June	1933.....	1,000	9,565	8,565	9,500
		100	7,868	7,768	13,000
		100	4,040	3,940	4,800
30,	.....	5,000	84,677	79,677	95,000
July	1933.....	10,000	182,771	172,771	170,000
		950	4,283	3,333	4,000
		10,000	78,121	68,121	90,000
		200,000	263,657	63,657	410,000
		350	4,539	4,189	3,900
		4,500	4,698	198	4,700
		2,100	13,731	11,631	12,000
Aug.	1933.....	1,800	13,470	11,670	12,000
	Totals.....	\$497,550	\$3,834,124	\$3,336,574	\$4,762,574



TABLE IV

## New York Title &amp; Mortgage Company

## Foreclosures Resulting in Sales of Properties to Outsiders

Month	Year 1931		Year 1932		Year 1933	
	Units	Amount of Mortgages	Units	Amount of Mortgages	Units	Amount of Mortgages
January	3	\$ 26,000	3	\$ 17,750	3	\$ 30,000
February	3	25,700	2	27,250	0	0
March	5	48,500	3	42,750	1	13,000
April	4	40,250	1	2,000	1	120,000
May	6	57,000	0	0	1	15,000
June	3	18,500	2	10,750	0	0
July	9	360,150	2	359,500	0	0
August	3	24,000	1	4,560	1	32,000
September	3	442,375	1	3,800	1	9,000
October	3	16,250	1	85,000	0	0
November	1	16,500	3	28,400	0	0
December	5	59,725	1	6,000	2	162,000
Total	48	\$ 1,134,950	20	\$ 587,700	10	\$ 381,000

## Foreclosures Resulting in Sales of Properties to Mortgage Company or for Account of Holders of Participations in Mortgages

January	28	\$ 3,029,250	67	\$ 2,139,400	155	\$ 6,304,030
February	24	270,800	78	2,402,450	136	4,330,570
March	28	856,400	67	1,706,315	26	1,009,175
April	31	1,933,850	93	3,395,300	20	313,675
May	38	832,410	63	5,510,255	53	811,215
June	19	265,300	94	4,262,700	15	2,941,277.98
July	31	919,650	109	3,847,050	35	11,145,625
August	28	3,918,400	93	4,620,560	10	254,650
September	43	1,378,000	116	3,770,905	16	200,000
October	41	1,875,775	114	9,199,760	17	218,673.93
November	47	1,539,900	111	7,346,395	23	930,800
December	43	516,250	160	6,037,555	16	163,035
Total	401	\$17,335,985	1165 (a)	\$54,238,645	522 (b)	\$28,622,726.91

(a) Includes 155 Units—Mtgcs. \$8,026,245 acquired for a/c Gtd. Holders.

(b) Includes 162 Units—Mtgcs. \$4,269,283.93 acquired for a/c Gtd. Holders.

1 Plaintiff in each of these foreclosure actions was the New York Title & Mortgage Company. The properties bought in by the N. Y. T. & M. Co. were in the names of Land Estates, Inc., and Liberdar Holding Corp., two wholly owned subsidiaries. Records on file at office of N. Y. T. & M. Co., No. 141 Broadway, New York City, N. Y.

TABLE V

Two Hundred and Twenty-three (223) Applications for Deficiency Judgments (Pursuant to Ch. 794, L. 1933) in Mortgage Foreclosure Proceedings from April 1, 1936, to April 1, 1937, in Which the Mortgage Commission of the State of New York was Applicant <sup>1</sup>

Amount of Mortgage	Amount of Deficiency Judgment	Assessed Value
\$ 7,750.	Denied	\$ 9,500.
17,000.	Denied	25,000.
4,000.	\$ 1,185.65	5,000.
11,000.	4,829.51	13,000.
3,750.	Denied	4,200.
4,500.	412.64	5,500.
5,250.	1,443.68	7,700.
6,000.	979.72	5,800.
97,000.	23,192.93	100,000.
2,750.	Denied	4,300.
3,250.	969.57	4,600.
4,750.	546.73	4,900.
4,200.	930.98	2,900.
42,500.	Denied	53,000.
3,500.	Denied	3,800.
36,000.	8,093.45	48,000.
90,000.	90,059.48	74,000.
9,000.	2,923.36	6,600.
28,800.	4,769.95	35,000.
145,500.	23,653.92	175,000.
166,000.	29,009.55	190,000.
186,600.	59,631.00	185,000.
116,400.	88,241.10	135,000.
30,000.	8,592.91	50,000.
85,000.	Denied	89,800.
124,900.	82,194.19	60,500.
11,500.	Denied	9,500.
4,000.	834.00	6,300.
18,000.	Denied	24,000.
85,000.	21,194.90	80,000.
245,000.	65,832.42	245,000.
200,000.	59,879.90	240,000.
10,000.	581.75	11,000.
20,000.	5,290.78	10,500.
60,000.	20,970.67	60,000.
49,000.	17,944.46	55,000.
70,000.	25,309.75	90,000.
4,250.	794.95	4,000.
22,500.	5,598.69	39,200.
16,000.	5,366.22	16,500.

<sup>1</sup> These figures are derived from public records on file in the office of the State Mortgage Commission, 346 Broadway, New York City, N. Y.

TABLE V (continued)

Amount of Mortgage	Amount of Deficiency Judgment	Assessed Value
17,500.	4,371.26	16,500.
14,000.	5,383.12	12,000.
4,200.	2,398.23	2,900.
3,250.	1,679.35	3,800.
3,500.	831.26	4,000.
7,000.	743.88	7,800.
35,000.	Denied	80,000.
150,000.	Denied	153,000.
69,500.	30,508.22	57,000.
27,000.	23,630.13	26,000.
59,250.	Denied	82,000.
90,000.	5,364.43	140,000.
3,750.	2,085.73	4,800.
12,500.	2,307.09	18,500.
35,000.	Denied	55,000.
3,250.	Denied	4,300.
18,000.	746.96	30,000.
5,750.	1,512.26	7,800.
4,500.	754.12	6,600.
4,750.	546.73	7,000.
10,000.	1,305.56	13,000.
5,250.	Denied	7,700.
8,000.	3,279.56	9,000.
2,750.	1,035.61	4,219.
1,900.	519.19	3,000.
8,500.	579.17	10,500.
4,750.	360.72	4,600.
2,400.	695.90	3,600.
3,750.	1,492.26	4,800.
5,750.	1,983.82	6,500.
3,500.	Denied	4,900.
3,250.	300.00	2,500.
3,250.	958.59	3,200.
10,000.	1,382.37	12,500.
12,600.	2,746.32	14,000.
30,000.	Denied	31,000.
4,500.	Denied	2,800.
4,500.	Denied	4,600.
3,500.	Denied	3,600.
2,550.	Denied	5,500.
3,750.	Denied	4,200.
3,750.	Denied	4,800.
6,000.	979.72	9,200.
8,000.	Denied	11,500.
5,500.	1,966.57	7,100.
6,500.	2,168.60	7,100.
18,500.	5,502.23	16,200.
4,250.	1,980.31	4,700.
3,500.	680.30	4,600.
3,500.	1,215.32	6,600.
6,750.	Denied	6,000.
4,500.	847.80	5,000.
4,500.	1,771.99	6,500.

TABLE V (continued)

Amount of Mortgage	Amount of Deficiency Judgment	Assessed Value.
7,250.	2,544.80	8,500.
9,000.	1,473.70	13,500.
6,000.	Denied	9,200.
3,850.	Denied	4,800.
370,000.	114,400.46	325,000.
7,000.	1,819.93	8,500.
4,000.	Denied	3,700.
4,500.	Denied	6,900.
4,000.	Denied	2,900.
15,000.	Denied	
22,500.	Denied	24,000.
4,500.	Denied	5,000.
471,000.	106,651.77	455,000.
3,500.	Denied	4,100.
25,000.	Denied	25,000.
20,000.	2,500.	6,000.
9,550.	Denied	11,000.
5,500.	Denied	7,300.*
3,500.	Denied	4,000.
2,000.	Denied	4,100.
5,750.	2,945.66	8,000.
4,500.	1,164.22	6,300.
250,250.	49,306.34	255,000.
200,000.	41,108.14	200,000.
6,500.	Denied	9,120.
140,000.	Denied	130,000.
3,750.	Denied	4,200.
5,750.	Denied	6,700.
4,750.	Denied	4,600.
7,750.	Denied	9,000.
82,000.	4,711.80	105,000.
130,000.	47,160.83	115,000.
64,050.	33,822.10	87,000.
5,500.	Denied	2,800.
50,000.	8,576.58	60,000.
159,500.	41,155.95	175,000.
4,250.	Denied	3,900.
8,000.	Denied	1,800.
72,000.	Denied	78,000.
4,250.	Denied	3,900.
216,250.	Denied	205,000.
66,500.	15,029.67	36,180.
33,500.	10,552.81	34,000.
4,250.	2,168.59	3,700.
197,000.	47,464.15	242,000.
44,750.	4,892.04	28,800.
6,500.	1,830.15	6,300.
12,500.	Denied	16,000.
12,100.	Denied	8,500.
5,500.	750.00	8,700.
6,000.	1,522.53	8,500.
12,000.	Denied	16,000.

TABLE V (continued)

Amount of Mortgage	Amount of Deficiency Judgment	Assessed Value
7,750.	Denied	9,500.
10,750.	Denied	13,000.
20,000.	Denied	23,000.
35,000.	Denied	37,000.
6,000.	309.27	8,500.
9,000.	Denied	13,000.
3,500.	Denied	4,600.
4,250.	229.04	4,500.
4,500.	700.88	4,600.
4,750.	Denied	5,000.
3,500.	Denied	4,400.
4,750.	Denied	5,000.
5,500.	Denied	2,800.
3,250.	Denied	3,700.
3,500.	1,710.48	4,000.
4,750.	255.75	5,000.
3,850.	2,297.55	4,600.
32,500.	9,135.42	35,000.
6,000.	Denied	9,400.
3,250.	738.99	3,200.
11,000.	4,809.23	13,000.
14,500.	2,730.01	17,000.
3,750.	1,669.22	5,800.
27,000.	11,179.62	33,000.
4,250.	2,285.50	5,600.
3,750.	604.10	5,800.
3,750.	347.88	4,800.
3,750.	294.05	4,300.
5,750.	1,425.46	5,500.
4,500.	1,115.22	4,600.
3,500.	729.23	3,900.
3,250.	Denied	3,500.
62,500.	16,870.37	64,000.
272,250.	156,984.67	274,000.
3,750.	1,629.02	3,600.
7,500.	3,657.55	9,700.
7,500.	Denied	9,800.
18,000.	Denied	22,000.
15,000.	Denied	17,000.
5,500.	1,380.12	7,100.
3,750.	Denied	3,400.
7,500.	4,183.25	5,200.
9,000.	1,845.18	10,500.
2,200.	1,905.71	2,700.
250,250.	23,875.41	255,000.
640,000.	317,793.68	670,000.
89,000.	15,189.70	55,000.
	L. 118	56,000.
70,000.	35,152.95	85,000.
35,000.	5,585.31	32,000.
95,000.	22,764.85	115,000.
598,000.	170,867.73	550,000.

TABLE V (continued)

Amount of Mortgage	Amount of Deficiency Judgment	Assessed Value
250,250.	19,554.17	255,000.
250,250.	54,027.75	255,000.
186,600.	46,995.65	185,000.
30,000.	5,564.43	18,400.
20,000.	5,749.08	19,000.
3,750.	361.54	3,800.
185,800.	80,867.05	200,000.
141,250.	20,588.55	145,000.
3,750.	590.21	4,100.
4,250.	26.04	6,400.
14,875.	4,970.04	15,000.
6,750.	859.14	6,000.
6,750.	10,207.58	55,000.
4,500.	1,582.03	4,400.
12,000.	897.90	9,000.
65,000.	9,250.94	65,000.
4,250.	869.37	3,700.
7,750.	748.53	9,500.
20,000.	7,082.00	24,000.
12,000.	2,055.14	12,000.
27,000.	19,784.21	38,000.
4,250.	1,114.14	5,700.
75,000.	10,461.53	54,425.
9,000.	5,647.56	10,000.
30,000.	4,905.37	33,000.
10,500.	3,974.74	10,000.



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222



# SUPREME COURT OF THE UNITED STATES.

No. 465.—OCTOBER TERM, 1938.

Robert B. Honeyman, Appellant, vs. David B. Jacobs and Mary V. Jacobs.	}	Appeal from the Supreme Court of the State of New York.
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[April 17, 1939.]

Mr. Chief Justice HUGHES delivered the opinion of the Court.

This case, coming here on appeal from the state court, presents the question of the validity under the contract clause of the Federal Constitution of Section 1083-a of the Civil Practice Act of New York (Chapter 794 of the Laws of 1933)<sup>1</sup> under which the appellant, a mortgagee of real property, was denied a deficiency judgment in a foreclosure suit, where the state court found that the value of the property purchased by the mortgagee at the foreclosure sale was equal to the debt secured by the mortgage.

The mortgage was executed in February, 1928, that is, prior to the legislation in question, to secure a bond for \$15,000, with in-

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<sup>1</sup> Section 1083-a, provides:

"1083-a. *Limitation Upon Deficiency Judgments During Emergency Period.*—No judgment shall be granted for any residue of the debt remaining unsatisfied as prescribed by the preceding section where the mortgaged property shall be sold during the emergency, except as herein provided. Simultaneously with the making of a motion for an order confirming the sale or in any event within ninety days after the date of the sale, the party to whom such residue shall be owing may make a motion in the action for leave to enter a deficiency judgment upon notice to the party against whom such judgment is sought or the attorney who shall have appeared for such party in such action. Such notice shall be served personally or in such other manner as the court may direct. Upon such motion the court, whether or not the respondent appears, shall determine, upon affidavit or otherwise as it shall direct the fair and reasonable market value of the mortgaged premises as of the date of sale or such nearest earlier date as there shall have been any market value thereof and shall make an order directing the entry of a deficiency judgment. Such deficiency judgment shall be for an amount equal to the sum of the amount owing by the party liable as determined by the judgment with interest, plus the amount owing on all prior liens and encumbrances with interest, plus cost and disbursements of the action including the referee's fee and disbursements, less the market value as determined by the court or the sale price of the property whichever shall be the higher. If no motion for a deficiency judgment shall be made as herein prescribed the proceeds of the sale regardless of amount shall be deemed to be in full satisfaction of the mortgage debt and no right to recover any deficiency in any action or proceeding shall exist".

terest, payable in February, 1931. On default in payment, appellant, the holder of the bond and mortgage, brought suit for foreclosure and judgment for foreclosure and sale was entered in April, 1938. The property was then sold to appellant for the sum of \$7500. In the referee's report of sale the amount due on the bond and mortgage was stated to be \$15,771.17, and the taxes, fees and expenses amounted to \$1319.03, leaving a deficiency of \$9590.20.

Section 1083-a of the Civil Practice Act required that the right to a deficiency judgment should be determined in the foreclosure suit. *Honeyman v. Hanan*, 275 N. Y. 382; 302 U. S. 375, 378. Accordingly, appellant made his motion in that suit to confirm the sale and for deficiency judgment. Proof was submitted to the court that the present value of the property was \$25,318. It does not appear that the correctness of this valuation was contested. The court thereupon confirmed the sale and denied the motion for deficiency judgment upon the ground "that the value of the property is equal to the debt of the plaintiff". Appellant's contention that Section 1083-a as thus applied violated the contract clause of the Constitution was overruled and this ruling was sustained by the Court of Appeals. 278 N. Y. 467. The court followed its earlier decisions, citing *Honeyman v. Hanan*, 275 N. Y. 382; *Klinke v. Samuels*, 264 N. Y. 144; *City Bank Farmers Trust Co. v. Ardlea Corporation*, 267 N. Y. 224.

Appellant invokes the principle that the obligation of a contract is impaired by subsequent legislation which under the form of modifying the remedy impairs substantial rights. See *Sturges v. Crowninshield*, 4 Wheat, 122, 200; *Von Hoffman v. City of Quincy*, 4 Wall. 535, 553, 554; *Antoni v. Greenhow*, 107 U. S. 769, 775; *Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, 430, 434, and cases cited, note 13; *W. B. Worthen Co. v. Thomas*, 292 U. S. 426, 433; *W. B. Worthen Co. v. Kavanaugh*, 295 U. S. 56, 60. As we said in *Richmond Mortgage Corporation v. Wachovia Bank*, 300 U. S. 124, 128, "The legislature may modify, limit or alter the remedy for enforcement of a contract without impairing its obligation, but in so doing it may not deny all remedy or so circumscribe the existing remedy with conditions and restrictions as seriously to impair the value of the right".

We have heretofore decided that the requirement of Section 1083-a that the right to a deficiency judgment must be determined in the foreclosure suit raises no substantial question under the con-

tract clause. *Honeyman v. Hanan*, 302 U. S. at p. 378. The question is whether in the instant case the denial of a deficiency judgment substantially impaired appellant's contract right. The bond provided for the payment to him of \$15,000 with the stipulated interest. The mortgage was executed to secure payment of that indebtedness. The contract contemplated that the mortgagee should make himself whole, if necessary, out of the security but not that he should be enriched at the expense of the debtor or realize more than what would repay the debt with the costs and expenses of the suit. Having a total debt of \$15,771.17, with expenses, etc., of \$1319.03, appellant has obtained through his foreclosure suit the property of the debtor found without question to be worth over \$25,000. He has that in hand. We know of no principle which entitles him to receive anything more. Assuming that the statute before its amendment permitted a recovery of an additional amount through a so-called deficiency judgment, we cannot say that there was any constitutional sanction for such a provision which precluded the legislature from changing it so as to confine the creditor to securing the satisfaction of his entire debt.

Section 1083-a in substance assured to the court the exercise of its appropriate equitable powers. By the normal exercise of these powers, a court of equity in a foreclosure suit would have full authority to fix the terms and time of the foreclosure sale and to refuse to confirm sales upon equitable grounds where they were found to be unfair or the price bid was inadequate. *Home Building & Loan Association v. Blaisdell*, *supra*, at pp. 446, 447, and cases cited, note 18. *Richmond Mortgage Corporation v. Wachovia Bank*, *supra*, at p. 129. In this control over the foreclosure sale under its decree, the court could consider and determine the value of the property sold to the mortgagee and what the mortgagee would thus realize upon the mortgage debt if the sale were confirmed. See *Monaghan v. May*, 242 App. Div. N. Y. 64, 67; *Guaranteed Title & Mortgage Co. v. Scheffres*, 247 App. Div. N. Y. 294.

The reasoning of this Court in *Richmond Mortgage Corporation v. Wachovia Bank*, *supra*, is applicable and governs our decision. There, a statute of North Carolina, enacted after the execution of notes secured by a deed of trust, provided that where a mortgagee caused the sale of mortgaged property by a trustee and, becoming the purchaser for a sum less than the amount of the debt, thereafter brought an action for a deficiency, the defendant was entitled


to show, by way of defense and set-off, that the property sold was fairly worth the amount of the debt or that the sum bid was substantially less than the true value of the property, and thus defeat the claim in whole or in part. Under the former law of that State, when the mortgagee became the purchaser at the trustee's sale under a power in the deed of trust, he might thereafter in an action at law recover the difference between the price he had bid and the amount of the indebtedness. We found that the other remedy by bill in equity to foreclose the mortgage was still available. And that in such a proceeding the chancellor could set aside the sale if the price bid was inadequate, and, in addition, he might award a money decree for the amount by which the avails of the sale fell below the amount of the indebtedness but that "his decree in that behalf would be governed by well-understood principles of equity". The Court was of the opinion that the statute modifying one of the existing remedies for realizing the value of the security could not "fairly be said to do more than restrict the mortgagee to that for which he contracted, namely, payment in full". The act recognized the obligation of his contract and his right to its full enforcement but limited that right "so as to prevent his obtaining more than his due. By the old and well known remedy of foreclosure, a mortgagee was so limited because of the chancellor's control of the proceeding". That "classical method" of realization upon a mortgage security through a foreclosure suit had always been understood "to be fair to both parties to the contract and to afford an adequate remedy to the mortgagee". In that view it appeared that the new law as to proceedings for a deficiency judgment after the exercise of a power of sale "merely restricted the exercise of the contractual remedy to provide a procedure which, to some extent, renders the remedy by a trustee's sale consistent with that in equity". And that did "not impair the obligation of the contract".

We reach a similar result here upon the same ground—that under the finding of the state court the mortgagee has obtained satisfaction of his debt and that the denial by the statute of a further recovery does not violate the constitutional provision.

The judgment is affirmed.

*Affirmed.*

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